



[Docket No. FR-6310-N-01]

Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act

AGENCY: Office of Chief Financial Officer, HUD.

ACTION: Notice.

SUMMARY: This notice announces that the Department of Housing and Urban Development (HUD, the Department) has conducted an initial review required by the Build America, Buy America Act (the Act) to identify and evaluate its Federal financial assistance programs for infrastructure to determine whether they are inconsistent with the Infrastructure Investment and Jobs Act (the IIJA). The Act imposes domestic content procurement preference requirements on Federal financial assistance programs for infrastructure that do not currently have such a requirement and requires Federal agencies to evaluate each financial assistance program for infrastructure administered by the agency to identify programs inconsistent with the Act's requirements for application of a domestic procurement preference. Each Federal agency must submit its report on the agency's programs and related determinations to Congress and to the Office of Management and Budget (OMB) and publish its report in the *Federal Register*. Today's notice complies with the Act's publication and reporting requirements and contains HUD's list of identified Federal financial assistance programs for infrastructure. HUD has determined that none of the programs it has reviewed to date are consistent with the Act. HUD's initial analysis errs on the side of over-inclusiveness based on the Department's current understanding of information contained in the Act and the imminent timing requirements for reporting.

FOR ADDITIONAL INFORMATION, CONTACT: J. Malcom Smith, Management and Program Analyst, Grants Management and Oversight Division, Office of the Assistant Chief Financial Officer of Systems, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410-8000; telephone number 202-

402-6472 (this is not a toll-free number), or email AskGMO@hud.gov with the subject line “Build America, Buy America”. Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

On November 15, 2021, the President signed into law the Infrastructure Investment and Jobs Act (Pub. L. 117-58) (the IIJA), which includes the Build America, Buy America Act at sections 70911 through 70927 (the Act). The Act ensures that Federal financial assistance programs for infrastructure require the use of materials produced in the United States, increases requirements for American-made content, and strengthens the waiver process associated with Buy American provisions. Section 70913 of the Act requires, within 60 days of the enactment of the IIJA, that each Federal agency, including HUD,¹ file a report with Congress and the Office of Management and Budget (OMB) which identifies and evaluates all financial assistance programs for infrastructure to determine whether the program is inconsistent with section 70914 of the Act. The report must be published in the *Federal Register*. The reports must identify and provide a list of which of these programs are “deficient,” as defined in section 70913(c) of the Act.²

Section 70914 of the Act requires that no later than 180 days after enactment of the IIJA (which would be May 14, 2022), Federal agencies “shall ensure that none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and

¹ The Act applies to “any authority of the United States that is an “agency”” as defined in 44 U.S.C. 3502. Pub. L. 117-58, section 70912(3).

² The Act defines “deficient programs” as “any Federal financial assistance program for infrastructure . . . for which a domestic content procurement preference requirement does not apply in a manner consistent with section 70914 of the law; or is subject to a waiver of general applicability not limited to the use of specific products for use in a specific project.” *Id.* at section 70913(c).

construction materials used in the project are produced in the United States.”³ Federal agencies must identify all infrastructure programs and determine whether a program is inconsistent with section 70914 of the Act, regardless of whether the program received funding from IIJA. (HUD did not receive funding.) Pursuant to the Act, an infrastructure program is considered inconsistent with section 70914 if: (1) it does not require that all the iron, steel, manufactured products, and construction materials used in the project are produced in the United States; (2) it does not issue waivers and written justifications as specified in section 70914; or (3) it is subject to a waiver of general applicability under section 70914(b) of the Act. On December 20, 2021, OMB issued a memorandum titled “Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act,” M-22-08, to implement these requirements and provide guidance to Federal agencies.⁴

HUD awards discretionary funding through over 20 Grant programs and 10 formula programs in support of HUD’s mission. These programs generally meet the definition of “Federal financial assistance” as defined in the Act. HUD has evaluated these programs and they are included in this report, but a full assessment of whether they fund infrastructure as described by the Act has not yet been completed. HUD has determined that no programs reviewed to date fully meet the requirements outlined in section 70914 of the Act. Details on each of these programs and the programs are listed below are included on a spreadsheet that can be accessed at: https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingopps. HUD’s initial analysis errs on the side of over-inclusiveness, as recommended by OMB Memorandum M-22-

³ Section 70912(4) of the Act defines “Federal financial assistance” and provides that the definition is consistent with the definition in 2 CFR § 200.1 and includes “all expenditures by a Federal agency to a non-Federal entity for an infrastructure project, except that it does not include expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.”

⁴ Available at <https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-08.pdf>.

08, based on the Department's current understanding of information contained in the Act and the imminent timing requirements for reporting.

Discretionary Programs

Office of Community Planning and Development

- Self-Help Homeownership Opportunity Program (SHOP)
- Community Development Technical Assistance
- Section 4 Capacity Building for Community Development and Affordable Housing.
- Tribal HUD-VASH Program for Community Development and Affordable Housing
- Office of Fair Housing and Equal Opportunity
- Fair Housing Assistance Program (FHAP) State and Local
- Fair Housing Initiatives Program for Education and Outreach
- Fair Housing Initiatives Program for Private Enforcement Initiatives
- Fair Housing Initiatives Program for Fair Housing Organization Initiatives

Office of Healthy Homes Lead Hazard Control

- Lead-Based Paint Hazard Control in Privately Owned Housing
- Lead and Healthy Homes Technical Studies
- Healthy Homes and Weatherization Cooperation Demonstration
- Healthy Homes Production Grant Program
- Lead Hazard Reduction Demonstration Grant Program
- Older Adults Modification Grant Program

Office of Housing

- Multifamily Housing Service Coordinator Grant Program
- Congregate Housing Services Program
- Project Rental Assistance Demonstration (PRA Demo) Program of Section 811

Supportive Housing for Persons with Disabilities

- Supportive Service Demonstration Program for Elderly Housing

Office of Policy Development and Research

- Research and Evaluations, Demonstrations, and Data Analysis and Utilization

Office of Public and Indian Housing

- Family Self Sufficiency
- Resident Self Sufficiency Service Coordinators
- Juvenile Re-entry Assistance Program
- Choice Neighborhood Planning
- Community Development Block Grant Indian Tribes and Alaska Native Villages
- Jobs Plus Pilot
- Choice Neighborhoods Implementation

Non-Discretionary Programs

Office of Community Planning and Development

- Community Development Block Grants/Entitlement Grants
- Community Development Block Grants/State's program and Non-Entitlement Grants in Hawaii
- Emergency Solutions Grant Program
- Home Investment Partnerships Program
- Housing Opportunities for Persons with AIDS
- Housing Trust Fund

Office of Public and Indian Housing

- Tribal HUD-VASH Program
- Indian Housing Block Grants
- Public Housing Capital Fund

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